PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

February 21, 2003

Agenda ID 1806
Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 02-01-035

This is the draft decision of Administrative Law Judge (ALJ) DeBerry. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at http://www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:jyc

Attachment

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Agenda ID #1806
Ratesetting

Decision **DRAFT DECISION OF ALJ DEBERRY (Mailed 2/21/2003)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Order Approving Proposed Qualifying Facility Contract Amendments, Agreements and Certain Amendments thereof Executed After July 31, 2001; and Authorizing Edison's Recovery of Payments Under the Proposed Contract Agreements and Amendments.	Application 02-01-035 (Filed January 25, 2002)

OPINION APPROVING CERTAIN AGREEMENTS AND AMENDMENTS BETWEEN SOUTHERN CALIFORNIA EDISON COMPANY AND QUALIFYING FACILITIES

I. Summary

This decision approves agreements and amendments (Agreements) between Southern California Edison Company (Edison) and four qualifying facilities (QF), the City of Long Beach (Long Beach), Watson Cogeneration Company (Watson), Midway-Sunset, and NP Cogen. Inc. The approved Agreements carry forward provisions previously adopted by the Commission but do not change the energy price within the existing QF contracts. This decision also approves three QF contract Agreements that propose minor modifications to contract energy prices: two Agreements with Orange County Sanitation District (Orange County) and an Agreement with Ontario Cogeneration, Inc. (Ontario).

Agreements for nine additional QFs included in the application terminated effective June 1, 2002, and therefore are not addressed in this decision.

II. Background

On January 25, 2002, Edison filed Application (A.) 02-01-035 requesting expedited Commission approval of Agreements for 16 QF projects (Application). Edison states that the Agreements are substantially based on agreements or forms of agreement already approved by the Commission and utilized by Edison to resolve similar disputes with numerous other QFs.[1] The disputes arise due to Edison's suspension of payments to QFs during the period from November 1, 2000 through March 26, 2001 (Payment Suspension). Edison explains that it was unable to enter into agreements with all of its QFs by the Safe Harbor date,[2] but continued to negotiate agreements based on its understanding that the Commission would continue to review and approve such agreements on a case-by-case basis.[3]

Edison states that ten of the affected QF projects consist of public entity-owned QFs that had committed to execute or support the Agreements prior to August 1, 2001, but who were unable to sign the Agreements by July 31, 2001. Three of the QF projects have Agreements that relate to the underlying contracts but do not change energy pricing terms, and two additional QF projects

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[1] See Decision (D.) 01-07-031 and D.02-01-033.

[2] The Safe Harbor date, July 31, 2001, was adopted in D.01-09-021 and defines the date that provides Commission approval for three non-standard contract amendments adopted in D.01-06-015.

[3] D.01-10-069 (p.11) provides an opportunity for utilities negotiating QF contract amendments to file for Commission approval through the filing of a new application.

entered into Agreements with slightly modified energy prices. Edison also requests approval of an Agreement with NP Cogen Inc., the subject of a separate Application, A.01-11-033.

On February 6, 2002, the California Cogeneration Council (CCC) filed a response in support of Edison's Application and, in particular, support for the Agreement with U.S. Borax, one of two QF Agreements proposing modified short-run avoided cost (SRAC) pricing. On March 4, 2002, the Office of Ratepayer Advocates (ORA) filed a protest limited to the proposed Agreement with Ontario, the other Agreement proposing modified SRAC pricing. ORA contends that it is uncertain whether the Ontario Agreement pricing formula will provide benefits to ratepayers, and therefore the Agreement should be denied. On March 14, 2002, the CCC filed a Motion for Leave to File a Response to ORA's limited protest.[4] CCC's response argues that the Ontario Agreement should be approved to avoid litigation, and that the other Agreements in the Application should be approved, as these have not been protested.[5]

In a March 15, 2002 letter to Commissioners Carl Wood and Geoffrey Brown, and the assigned Administrative Law Judge (ALJ), Edison stated that on March 1, 2002, Edison made a series of payments representing substantially all of its outstanding, past due indebtedness, including payments to QF creditors, for

[4] This motion is unopposed and we grant CCC's Motion For Leave to File a Response to ORA's Limited Protest.

[5] In a Notice of Ex Parte Communication dated March 14, 2002, Ontario indicated that it would file a petition to intervene and file a response to ORA's limited protest. However, no filings from Ontario were received.

electricity delivered during the QF Payment Suspension, including the QFs whose Agreements are the subject of the Application. Edison's letter also states that it entered into interim agreements with these QFs. In most cases, the interim agreement (Conditional Release and Waiver) includes a provision whereby Edison received a full release of all Payment Suspension-related claims in return for the payments to QFs. However, Edison states that these interim agreements do not resolve all material matters which are the subject of the Application, including the price for energy, other releases of claims, and other significant issues.[6]

On March 22, 2002, the assigned ALJ issued a ruling requesting supplemental information to justify Edison's Application, including support for higher energy costs under the proposed Agreements, estimates of litigation costs, and justification for Edison's request for exemption from the Safe Harbor provision of D.01-09-021.

Edison filed its response on April 23, 2002. Edison states that it overstated the amount of additional payments associated with the Ontario Agreement, and as a result of a recalculation determined that the additional payments to Ontario would be about $46,000, above projected SRAC prices, rather than $240,000 as originally calculated. Edison also states it has modified the Ontario Agreement to be effective October 1, 2001 instead of March 27, 2001. This results in a further reduction of additional projected costs above SRAC prices from approximately $46,000 to $17,000.

[6] See Attachment A.

In addition, Edison's response compared projected energy payments for twelve proposed QF agreements[7] to SRAC transition formula payments using both: (1) the current SRAC transition formula, and (2) assumptions based on the CCC's recommended SRAC modifications proposed in Rulemaking 99-11-022,[8] and that the Court of Appeals annuls D.01-01-007 regarding line losses.[9] In the first comparison, energy payments for all twelve QF Agreements exceed projected SRAC payments using the current SRAC formula. In the second comparison, the IER and O&M adder increase substantially above current values, and the line loss factor is reduced. The result is the opposite of the first comparison; energy costs for all twelve QF Agreements would be less than projected SRAC formula payments.

Edison further argues that the Agreements provide a stay of litigation, forbearance from the assertion of additional claims, release and dismissal of claims, resumption of QF deliveries and cessation by QFs attempting to terminate QF contracts. Edison contends that the standard of reasonableness should be based upon the facts that are known or should have been known by utility management at the time of the settlements. Edison explains that although it has now made full payment to the QFs, at the time of the Agreements it faced

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[7] These are ten public agency agreements, and amendments with U.S. Borax and Ontario.

[8] CCC's proposes an increase in the incremental energy rate (IER) and the operational and maintenance adder (O&M adder) used in the SRAC formula for calculating SRAC payments.

[9] On August 20, 2002, the Court of Appeals affirmed in part and annulled in part D.01-01-007. Petitions for rehearing were filed by the Independent Energy Producers Association and Caithness Energy, LLC.

lawsuits, damage claims, and uncertainty regarding resolution of its potential bankruptcy. Edison believes that at the time of these events the Agreements provided significant value in the context in which they were negotiated, and that it would be incorrect to use a hindsight review and disregard the circumstances existing when the Agreements were executed.

In a May 13, 2002 letter to Commissioners Carl Wood, Geoffrey Brown, and the assigned ALJ, Edison stated that Agreements for nine QFs included in the Application would terminate effective June 1, 2002.[10] Edison indicates, however, that the Conditional Release and Waiver Agreements with these nine QFs remain intact.[11] As Edison's letter indicates, the termination of the nine Agreements means that seven Agreements remain as the subject of the Application. The remaining seven QF Agreements include three that modify the energy price (Orange County (2 Agreements), and Ontario).[12] Four other Agreements have no energy price change (Watson, Long Beach, Midway-Sunset, and NP Cogen, Inc.)

On May 17, 2002, the ALJ issued a second ruling asking for clarification of Edison's March 15 letter, and specifically requesting quantification or cost estimates of the potential litigation risks referenced in Edison's April 23 response.

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[10] See Attachment B.

[11] The Conditional Release and Waiver Agreements are not included in Edison's Application.

[12] Modified energy prices are not fixed energy prices such as the 5.37 cents/kilowatt-hour price adopted in other QF amendments. These amendments modify the IER and O&M adder components of the SRAC formula.

Edison states in a May 24, 2002 response to the May 17 ruling that as a result of the Conditional Release and Waiver Agreements, QFs released Edison from all claims arising from the suspension of payments during the Payment Suspension period. Consequently, Edison faces no current litigation risk from these QFs for Payment Suspension-related claims. However, Edison contends that the Commission should consider other benefits of the Agreements including the significant benefit conferred on Edison during its liquidity crisis by the Agreements, and the potentially lower energy costs under the Agreements if the increased IER and O&M values are adopted thus increasing SRAC payments.

III. Agreements Modifying Energy Price

Three of the seven remaining Agreements propose energy prices exceeding projected SRAC energy prices using the current IER and O&M adder values in the SRAC formula.[13] Edison projects that energy payments for the Orange County Agreements will exceed SRAC by $42,000 and $22,000 on a net-present-value (NPV) basis.[14] Similarly, Edison projects approximately $17,000 in greater energy payments to Ontario under its Agreement, reduced substantially from its original estimate of $240,000.[15] The total of these amounts are $81,000 or about 1-4% greater than projected SRAC payments under the current SRAC formula. By comparison, energy payments under the Agreements would be $284,000, $423,000 and $1,195,000, or a total of $1,902,000, less than

[13] Orange County (2 Agreements) and Ontario.

[14] Discounted at a 10% interest rate during the term of the Agreements.

[15] Edison indicates that ORA no longer objects to the Ontario Agreement. (p.3, April 23, 2002, Response to ALJ ruling)

projected SRAC payments using CCC's recommended IER and O&M adder values in the SRAC formula on an NPV basis, or reductions of 37-47%.[16] In weighing the possible outcomes under these two scenarios, and assuming even a small probability of using CCC's recommended values in SRAC resulting in higher future SRAC payments, indicates that overall the Agreements would be less costly for ratepayers.

Edison argues that we should also consider the circumstances existing when these Agreements were executed, and the suspension of litigation conferred on Edison during the period of its potential bankruptcy. We are mindful that when Edison entered into these Agreements, it received benefits that allowed the utility time to develop financial and credit arrangements without having to also contend with QF litigation. These benefits were also conferred on ratepayers as a forebearance of litigation reduced potential utility costs. If the litigation had proceeded with these various QFs, the additional costs of litigation would likely have exceeded the $81,000 requested under the Agreements. Finally, as Edison contends, these Agreements will end the adversarial relationship between Edison and these QFs, thus providing greater stability. Although these benefits are not quantifiable, nevertheless Edison and its ratepayers have benefited from the suspension of litigation and will benefit from the resolution of disagreements between Edison and the subject QFs. Taken as a whole, including the potential lesser costs of the Agreements over

[16] These estimated amounts also assume that the Court of Appeals annuls D.01-01-007, thereby reinstating the former line loss factors.

greater SRAC payments, and the other benefits described above, we find the Agreements are reasonable, and in the public interest.

IV. Agreements Not Modifying Energy Price

Our review of the QF Agreements that do not modify energy rates[17] shows that these amendments are reasonable and should be approved. The Long Beach Fixed Rate Agreements, as amended by the Changed Circumstances Amendment (CCA), contain essentially the same terms we have approved for use with other QFs, but without modifying the energy rate. This amendment thus provides settlement benefits to ratepayers without increasing energy costs above existing contract energy costs, and therefore the amendment is reasonable and in the public interest.

Similarly, both the Watson and Midway-Sunset Agreements carry forward settlement terms we have found reasonable in previous QF amendments, but without modifying the energy price. These Agreements resolve disputes with Edison and resolve capacity payment matters between Edison and both Watson and Midway-Sunset. Thus the Agreements provide benefits to ratepayers, are in the public interest and should be approved.

The final QF Agreement we address relates to NP Cogen, Inc. Edison requests that we approve the CCA, which was not included in Edison's A.01-11-033 regarding NP Cogen, Inc. This Agreement, negotiated after Edison filed A.01-11-033, essentially includes all of the amendment terms we approved in D.02-01-033. Edison requests that we deem the CCA with NP Cogen, Inc. reasonable if the NP Cogen, Inc. Settlement Agreement in A.01-11-033 is

[17] Long Beach, Watson, Midway-Sunset, and NP Cogen, Inc.

approved. In D.02-04-014, adopted April 4, 2002, we approved the NP Cogen, Inc. settlement, and therefore we will also approve the CCA between Edison and NP Cogen. This Agreement provides benefits to ratepayers, is reasonable and in the public interest.

V. Consistent with the Law

Negotiation of QF contract amendments after July 31, 2001 is permitted by D.01-07-031 and D.01-10-069. Edison entered into its Agreements with the seven subject QFs after July 31, 2001, and submitted these Agreements including necessary justification through its application and responses to ALJ rulings.

VI. Reasonable in Light of the Whole Record

The record shows that the seven subject QFs entered into the Agreements with Edison that resolved on-going disputes and litigation, and provided Edison time to develop financial and credit arrangements during its potential bankruptcy. Furthermore, the proposed amendments and agreements do not provide for the fixed energy price found in other QF amendments, but under scenarios of different SRAC energy prices, may result in savings to ratepayers. CCC filed in support of Edison's application. Although ORA protested one of the 16 Proposed Agreements, Edison states that ORA no longer opposes this Agreement.

VII. Categorization

In Resolution ALJ 176-3081, dated February 7, 2002, the Commission preliminarily categorized this Application as ratesetting, and preliminarily determined that hearings were necessary. A limited protest by ORA was received; however, ORA did not request hearings as there are no material disputes of fact. Given this status public hearing is not necessary and the

preliminary determinations made in Resolution ALJ 176-3081 with regard to hearings should be altered, but the categorization remains the same.

VIII. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on_____, and reply comments were filed on_____.

IX. Assignment of Proceeding

Carl W. Wood is the Assigned Commissioner and Bruce DeBerry is the assigned ALJ in this proceeding.

Findings of Fact

1. Edison and 16 QFs were unable to enter into Agreements by the Safe Harbor date of July 31, 2001.

2. The Agreements resolve certain disputes between Edison and the QFs arising as a result of suspension of payments between November 1,2000 and March 26, 2001.

3. The Agreements contain repayment provisions for outstanding past due indebtedness and a release of Payment Suspension-related claims by the settling QFs.

4. On June 1, 2002, Agreements with nine QFs automatically terminated.

5. For the three Agreements that modify energy prices (Orange County (2) and Ontario) Edison projects, that energy prices under the Agreements will exceed the projected SRAC energy prices by $42,000, $22,000, and $17,000 on a NPV basis during the term of the Agreements using current IER and O&M adder values.

Edison also projects that energy prices for these three Agreements would be less than projected SRAC energy prices by $284,000, $23,000, and $1,195,9000 on a NPV basis during the term of the Agreements using CCC's recommended values for IER and O&M adder in the SRAC energy formula, and assuming the line loss decision is annulled.

6. The Agreement with Long Beach incorporates terms previously approved by the Commission, does not modify the energy price in the existing contract, is reasonable and in the public interest, and should be approved.

7. The Agreements with Watson and Midway-Sunset incorporate terms previously approved by the Commission, resolve disputes and capacity payment matters, do not modify the energy price, are reasonable and in the public interest, and should be approved.

8. The CCA between Edison and NP Cogen, Inc. includes terms previously adopted in D.02-01-033, is reasonable and in the public interest and should be approved.

Conclusions of Law

1. D.01-10-069 provides utilities, an opportunity to seek Commission approval of Contract Agreements entered into after July 31, 2001 by filing an application with the Commission.

2. Edison has demonstrated that the Agreements with Orange County and Ontario are reasonable and in the public interest.

3. The Agreement between Edison and the Long Beach incorporates essentially the same settlement terms previously approved without modifying the energy price and is reasonable and in the public interest.

4. The Agreements between Edison and Watson and Midway-Sunset carry forward settlement terms previously found reasonable without modifying the energy price, are reasonable and in the public interest.

5. The CCA between Edison and NP Cogen, Inc. includes amendment terms adopted in D.02-01-033 and is deemed reasonable.

6. In order that ratepayers may immediately benefit from the approved Agreements, this decision should be effective today.

O R D E R

IT IS ORDERED that:

1. This order is a final determination that a hearing is not needed in this proceeding.

2. The agreements between Southern California Edison Company (Edison) and Orange County Sanitation District and Ontario Cogeneration, Inc. are authorized.

3. The Changed Circumstances Amendments (CCA) between Edison and the City of Long Beach, Watson Cogeneration Company and Midway-Sunset are authorized.

4. The CCA between Edison and NP Cogen, Inc. is authorized.

5. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Attachment A

Attachment B